IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9009, 9101, 9446, 9781, 17234 of 2002

W.P.No.9009/2002

Between :

1. T.Mohan Rao s/o. Venkoba Rao
2. Md.Yousuf s/o. Md. Ismail .. Petitioners

Vs.

1. The Deputy Commissioner of Commercial Taxes,

Kakinada Commercial Taxes Division,

East Godavari District-533001.

2. The Deputy Commissioner of Commercial Taxes,

Eluru Commercial Taxes Division,

West Godavari District-521001.

3. The Commissioner of Commercial Taxes,

M.J. Road, Nampally, Hyderabad-500001.

4. T.Veerabhadra Rao, Senior Assistant,

C/o. Commercial Tax Officer, Kakinada,

East Godavari District-533001.

5. Ch.Kanakaraju, Senior Assistant,

O/o. Commercial Tax Officer, Kakinada,

East Godavari District-533001.

6. N.L. Prasad, Senior Assistant,

O/o. CTO, Narasapuram,

West Godvarai District-533001.

7. P.Narasimha Rao, Senior Assistant,

O/o.Deputy Commercial Tax Officer,

Mogalturu, West Godavari District-533001.

8. A.V. Satyanarayana Murthy,

Senior Assistant, O/o.CTO-II, Tanuku,

West Godavari District.

9. B.S. Prakasa Rao, Senior Assistant,

O/o. CTO, Tadepalligudem,

West Godavari District.

.. Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly in the nature of writ of mandamus calling for records relating to the 1st respondent in Ref.E2/583/2000, dated 11-2-2000 and the consequential orders of the Hon'ble A.P. Administrative Tribunal in O.A.No.1488/2000 and batch, specifically in O.A.No.845/2000 dated 24-4-2002 and set aside the same by holding as illegal, arbitrary and violative of settled law.

Counsel for the Petitioner:MR.P.SURESH REDDY

Counsel for the Respondent Nos.1 to 3 : G.P. for Services-II

Counsel for the Respondent Nos.4 to 9 : Sri P.V. Krishnaiah

WRIT PETITION NO : 9101 of 2002

Between:

1. P.Satyanarayana Murthy s/o.Satyam
2. I.V.Satyanarayana s/o. Veerabhadra Sarma
3. Ch.V.Gopalakrishna Murthy s/o. Manikya Prabhuvu
4. Y.Nagapathi Rao s/o. Vishwakseena Rao
5. K.Venkata Reddy s/o. Rami Reddy .. Petitioners

And

1. Commissioner of Commercial Taxes,

Government of Andhra Pradesh,

Nampally, Hyderabad-500001.

2. Deputy Commissioner of Commercial Taxes,

Kakinada Division, Kakinada,

East Godavari District-533001.

3. T.Veerabhadra Rao,

Senior Assistant, DCTO's Office,

Anaparti, East Godavari District. .. Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue an appropriate writ, order or direction more particularly in the nature of writ of mandamus calling for records relating to the 2nd respondent in Ref.E2/583/200, dated 11-2-2000 and the consequential orders of the A.P. Administrative Tribunal in

O.A.No.1488/2000 and batch specifically in O.A.No.5070/96 dated 24-4-2002 and set aside the same by holding as illegal, arbitrary and violative of settled law.

Counsel for the Petitioner : MR.P.SURESH REDDY

Counsel for the Respondents : G.P. Services-II

Counsel for the Respondent No.3 : Mr.P.V. Krishnaiah

WRIT PETITION NO : 9446 of 2002

Between :

1. B.Bhaskara Rao s/o. Ranganayakulu
2. G.Appa Rao s/o. Ramaswamy
3. B.Venkata Rao s/o. China Mallanna
4. P.Appa Rao s/o. Yerrayya .. Petitioners

Vs.

1. Commissioner of Commercial Taxes,

Government of Andhra Pradesh,

Nampally, Hyderabad-500001.

2. Deputy Commissioner of Commercial Taxes,

Kakinada Division, Kakinada,

East Godavari District-533001.

3. T.Veerabhadra Rao, Senior Assistant,

DCTO's office, Anaparti,

East Godavari District. .. Respondents

Petition under Article 226 of the constitution of India praying that

in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly in the nature of writ of mandamus calling for records relating to the 2nd respondent in Ref.E2/583/2000, dated 11-2-2000 and the consequential orders of the Hon'ble A.P. Administrative Tribunal in O.A.No.1488/2000 and batch, specifically in O.A.No.5070/96 dated 24-4-2002 and set aside the same by holding as illegal, arbitrary and violative of settled law.

Counsel for the Petitioner : MR.P.SURESH REDDY

Counsel for the Respondents : GP FOR SERVICES II

Counsel for the Respondent No.3 : Mr. P.V.Krishnaiah

WRIT PETITION NO : 9781 of 2002

Between :

1. Ponnada Satyanarayana Rao s/o. late Mallayyacharullu
2. S.Suryanarayana s/o. late Veeraswamy
3. K.R. Satyavalli w/o. late Tatapudi Achutham
4. P.Jayakumari d/o. P.Aaron

.. Petitioners

And

1. The Commissioner of Commercial Taxes,

Government of Andhra Pradesh,

Nampally, Hyderabad.

2. The Deputy Commissioner of Commercial Taxes,

Kakinada Division, Kakinada, East Godavari District.

3. T.Veerabhadra Rao, Senior Assistant,

D.C.T.O's Office, Anaparti,

East Godavari District. .. Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly in the nature of writ of mandamus calling for records relating to the 2nd respondent in Ref.E2/583/2000, dated 11-2-2000 and the consequential orders of the A.P. Administrative Tribunal in O.A.No.1488/2000 and batch, specifically in O.A.No.5070/96 dated 24-4-2002 and set aside the same by holding as illegal, arbitrary and violative of settled law.

Counsel for the Petitioner:MR.P.SURESH REDDY

Counsel for the Respondents: GP FOR Services-II

Counsel for the Respondent No.3 : Mr. P.V. Krishnaiah

WRIT PETITION NO : 17234 of 2002

1. M.Uma Maheshwara Rao s/o. Gopi Raju
2. R.Venkateswara Rao s/o. Appala Swamy .. Petitioners

And

1. The Commissioner of Commercial Taxes,

Government of Andhra Pradesh,

Nampally, Hyderabad-500001.

2. The Deputy Commissioner of Commercial Taxes,

Kakinada Division, Kakinada,

East Godavari District-533001. .. Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus calling for records relating to the 2nd respondent in Ref.E2/583/2000 dated 11-2-2000 and the

consequential orders of the A.P. Administrative Tribunal in O.A.No.8029/2000 dated 24-4-2002 and set aside the same by holding as illegal, arbitrary and violative of settled law and consequently direct the respondents to follow the seniority list dated 5-10-1993 of the Senior Assistants of East and West Godavari Districts, which is only the existing final seniority list in the cadre of Seniority Assistants for further promotion to the post of Assistant Commercial Tax Officer.

Counsel for the Petitioner : MR.Y.V.SATYANARAYANA

Counsel for the Respondents : GP FOR SERVICES II

The court made the following :

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COMMON ORDER: (per P.S.Narayana.,J)

1. These batch of Writ Petitions are filed by the unsuccessful applicants, certain non-parties to the O.As with the leave of this Court and also the Government as against the Common Orders made in O.A.Nos.1488/2000 and O.A.No.845/2000 & Batch on the file of A.P. Administrative Tribunal, in short hereinafter referred to as Tribunal, for the purpose of convenience. The unsuccessful applicants in O.A.No.845/2000, the main matter which had been disposed of in the aforesaid Common Order by the Tribunal filed W.P.No.9009/2002 questioning the impugned order and also Reference E2/583/2000, dated 11-2-2000.

2. P.Satyanarayana Murthy and four others filed W.P.No.9101 of 2002 questioning the orders in O.A.No.1488/2000 and Batch in general and O.A.No.5070/96 in particular and also the proceedings dated 11-2-2000 referred to supra with the leave of the Court. Likewise, B.Bhaskar Rao and three others filed W.P.No.9446/2002 with the leave of the Court questioning the order made in O.A.No.1488/2000 and batch in general and O.A.No.5070/96 in particular, inclusive of the proceeding dated 11-2-2000 after obtaining leave of the Court. Likewise, Ponnada Satyanarayana Rao and three others who are also non-parties to the O.A.No.5070/96 filed W.P.No.9781/2002 questioning the aforesaid batch in general and O.A.No.5070/96 in particular inclusive of the proceeding dated 11-2-

2000. M.Uma Maheswara Rao and another, the applicants in O.A.No.8029/2000 filed W.P.No.17234/2002 questioning the order made in the batch aforesaid in general and O.A.nO.8029/2004 in particular inclusive of the proceeding dated 11-2-2000. The Government of Andhra Pradesh questioned the orders made in the aforesaid batch by filing W.P.No.19243/2003. Thus, W.P.No.9009/2002, 17234/2002, 19243/2003 are the Writ Petitions filed by the parties to the batch whereas the other Writ Petitions referred to supra were filed by the aggrieved parties or the affected parties obtaining the leave of the Court being non-parties to the aforesaid litigation.

3. <u>Submissions of Sri P.Suresh Reddy:</u>

Sri P.Suresh Reddy, the learned Counsel representing the writ petitioners leading the batch had traced the historical background of the litigation, the appointment of Junior Assistants on temporary basis, and the allotment of unofficial respondents who were affiliated to Commercial Tax Department and the preparation of seniority list and the ranking given in the District Selection Committees, in short "DSCs". The learned Counsel also pointed out that these are all District cadre posts and had meticulously taken this Court the Rules governing the field and also the method and mode how an integrated seniority list to be prepared. The learned Counsel also had traced out

several aspects relating to the exercise made in preparation of the seniority list and guidelines to be followed in relation thereto and series of litigations in this regard and the resultant effect thereof and would attack the impugned order principally on the ground that the same had been made in the light of G.O.Ms.No.711 which in fact had been set aside. The learned Counsel also pointed out that this is a matter concerned with the seniority list and preparation thereof and several of the parties are affected parties either by threat of reversion or otherwise and hence those parties who are not impleaded as parties being non-parties to the litigation and being aggrieved or affected parties prior prayed for the leave of the Court and having obtained the leave the said writ petitioners are agitating the present litigation. The learned Counsel would maintain that in the light of the same, there cannot be any doubt or controversy that these Writ Petitions also are maintainable despite the fact that such parties initially had not approached the Tribunal and the ratio laid down in **Chandra Kumar Vs. Union of India** would not come in the way at all for maintainability of these Writ Petitions. The learned Counsel also would maintain that certain of the similarly placed persons filed W.P.M.Ps. for being brought on record and these applications also may have to be allowed for the reason that they are also interested in the result of this litigation. The learned Counsel while explaining the chronological events had pointed out that in November 1974 the

unofficial respondents were temporarily appointed as Junior Assistants and the petitioners were temporarily appointed on 16-2-1976 and the DSC selections were held in September 1976 and the ranking list was communicated by the District Collector on 18-10-1976 and the integrated seniority list of Junior Assistants/Typists/Stenos of Kakinada Division was issued by Deputy Commissioner of Commercial Taxes on 21-5-1981 and the serial numbers of the petitioners and the unofficial respondents also had been pointed out specifically in this regard. The learned Counsel while further elaborating his submissions had pointed out to the orders passed in O.A.No.41794 and 41796 of 1990 dated 4-9-1992 directing to prepare seniority list with reference to the ranking assigned by selection committee subject to rule 22 of A.P. State and Subordinate Service Rules. The Counsel also pointed out that in compliance of the said O.A. orders, seniority list was prepared by the Deputy Commissioner of Commercial Taxes, Kakinada dated 10-5-1993 and in the cadre of Senior Assistants the seniority list was finalized on 5-10-1993 and consequent thereupon the petitioners were promoted as A.C.T.Os. basing on the seniority list dated 5-10-1993 on 9-4-1994. On 21-7-1994 and 5-8-1994 the Commissioner of Commercial Taxes issued parameters and directions in view of the orders made in O.A.No.3631/93 dated 4-4-1994 in preparing the seniority list. On 16-9-1995 basing on the directions and parameters

fixed by the Commissioner of Commercial Taxes integrated seniority list was prepared and communicated. The Counsel also pointed out that on 27-10-1995 in O.A.No.5696/1995 stay was granted by the Tribunal as against the above integrated seniority list. The learned Counsel also made emphasis on G.O.Ms.No.711 dated 28-8-1996 issuing directions to prepare seniority list of Junior Assistants/Typists/Stenos in accordance with their dates of joining by taking into consideration the entire temporary service and the other factors. On 30-10-1996 the Commissioner, Commercial Taxes requested the Deputy Commissioner of Commercial Taxes not to take any action pursuant to G.O.Ms.No.711 until further orders. On 29-4-1997 the stay granted on 27-10-1995 in O.A.No.5696/95 had been vacated. The 1st respondent on 11-9-1997 issued the provisional seniority list basing on G.O.Ms.No.711. Certain of the respondents filed O.A.Nos.17886 to 17893 of 1990 praying for a direction to regularize their services as Junior Assistants on temporary basis for seniority and the said O.As. were dismissed on 9-2-1998. On 22-6-1998 directions were issued in O.A.No.4062/98 and 4072/98 not to take any further action in pursuance of G.O.Ms.No.711 referred to supra. The learned Counsel placed emphasis on the order made in O.A.No.5420/96 and batch dated 18/9/1998 where G.O.Ms.No.711 was set aside by the Tribunal. On 11-2-2000 overruling the objections filed by the petitioners the

seniority list which had been impugned the final list of Junior Assistants was published by taking the date of first appointment on temporary basis for reckoning the seniority. On 23-8-2000 the Commissioner of Commercial Taxes issued direction to the 2nd respondent to finalise the integrated seniority list of Junior Assistants/Typists/Stenos etc., basing on the guidelines and parameters dated 21-7-1994 and 25-8-1994 and also submit compliance in relation thereto. Further, emphasis was made on the orders made in W.P.No.28245/98 and 19636/99 filed against O.A.No.5853/90 and 5420/96 wherein G.O.Ms.No.711 had been set aside and the Writ Petitions were dismissed on 5-12-2001. Subsequent thereto the impugned orders of the Tribunal in the present batch were made upholding the action of the 2nd respondent in preparing the seniority list by taking the first date of appointment prior to DSC merit ranking contrary to the Judgment referred to supra in relation to DSC of 1976 of Commercial Tax Department. Subsequent thereto the other consequent details also had been pointed out. The learned Counsel also had taken this Court through the pleadings filed in W.P.No.9009/2002 inclusive of the counter affidavit and also the reply affidavit explaining the respective stands. The learned Counsel pointed out that the stand taken by the Government in the counter affidavit in the present Writ Petition is just akin to the stand taken by the Government in W.P.No.19243/2003

wherein the Government concentrated more on the competency of the Officer who had prepared and published the seniority list. The learned Counsel would maintain that the Tribunal totally erred in making the impugned order totally disregarding the prior directions issued by the Tribunal and also ignoring the fact that the reckoning of the seniority cannot be done in the light of G.O.Ms.No.711 in view of the fact that the same had been set aside which had been confirmed in the Writ Petitions aforesaid. The learned Counsel also pointed out to the relevant portions of the seniority list and would maintain that at any rate the order impugned cannot be sustained.

4. <u>SUBMISSIONS OF SRI P.V. KRISHNAIAH:</u>

On the contrary Sri P.V. Krishnaiah, the learned Counsel representing the unofficial respondents had taken this Court through the respective pleadings of the parties and would raise a preliminary objection relating to maintainability of the Writ Petitions by non-parties to the litigation who are questioning the seniority list before this Court without approaching the Tribunal at the first instance which is contrary to the ratio laid down in Chandra Kumar's case referred (1) supra. The learned Counsel also pointed out to the portions of the findings recorded by the Tribunal and would justify the said findings by taking through the reasoning adopted by the Tribunal. The

Counsel would maintain that East Godavari and West Godavari are separate District Units and separate recruiting Units and merely because at a particular point of time an integrated seniority list was prepared the initial ranking at the District level cannot be disturbed and this would be definitely contrary to the Rules. The learned Counsel pointed out to Rule 33(b) of the Rules in particular in this regard. The Counsel also made elaborate submissions about the inter se seniority and the integrated seniority and how to settle the seniority and how to reckon the seniority in such cases. The Counsel also pointed out to Rules 22 and 23 in this regard. The learned Counsel also would submit that the merit list was not properly prepared and the respective District Units to be taken into consideration and integrated seniority list to be prepared and in the light of the same the impugned order does not suffer from any illegality whatsoever. The Counsel also pointed out that the stand taken by the Government in W.P.No.19243/2003 is the self-same stand which had been taken in the counter affidavit filed in W.P.No.9009/2002. The learned Counsel pointed out that O.A.No.845/2000 was dismissed by the Tribunal being devoid of merit. O.A.No.1488/2000 was allowed to the extent of restoring seniority of the applicants above the party respondents but however it was specifically made clear that in all other respects the impugned seniority list will remain intact and in the light of the aforesaid finding

O.A.No.3653/1993 was disposed of. Likewise, O.A.No.7017/95 was disposed of with a direction to the respondents to consider the cases of the applicants for promotion as Assistant Commercial Tax Officers in terms of the impugned seniority list no doubt subject to the orders made in O.A.No.845/2000 and O.A.No.1488/2000. Likewise, O.A.No.1283/1994 was allowed to the extent of quashing the seniority list of Junior Assistants, Typists and Steno Typists dated 10-5-1993 and also quashing the seniority list of Senior Assistants, dated 5-10-1993 prepared by the Deputy Commissioner of Commercial Taxes with a further direction that the seniority list in the category of Junior Assistants/Typists/Steno Typists shall be prepared and issued in accordance with the orders made in O.A.No.845/2000 and O.A.No.1488/2000. Likewise, O.A.No.1209/94 was allowed to the extent of quashing the seniority list dated 10-5-1993 and also 5-10-1993 no doubt subject to the orders made in O.A.No.845/2000 and 1488/2000 and batch. Likewise, O.A.No.945/94, 301/94, 5070/96 and 1630/96 also were allowed to the extent of quashing the seniority list of Junior Assistants dated 10-5-1993 and 5-10-1993 in the light of the orders made in O.A.No.845 and 1488 of 2000. O.A.No.7822/90 and 695/96, 179/98 and 2174/97 were disposed of in terms of the orders issued in O.A.No.845/2000 and 1488/2000 and the remaining O.A.Nos.3907/2001 and 8029/2000 were dismissed and the other V.M.As. and M.As. if any in the said O.As. were

disposed of. In the light of the facts and circumstances the Counsel would maintain that the order impugned is just and proper order and in the light of the limitations imposed on this Court while exercising certiorari jurisdiction it is not a fit matter to be interfered with.

5. The other Counsel on record inclusive of the Counsel for implead petitioners advanced certain submissions adopting the respective stands taken by the Counsel referred to supra.

6 . SUBMISSIONS OF THE GOVERNMENT PLEADER FOR SERICES-II:

The learned Government Pleader for Services-II had taken this Court through the counter affidavit filed by the Government in W.P.No. 9009/2002 and the specific grounds raised in W.P.No.19243/2003. The learned Counsel also pointed out that the Tribunal erred in observing that the Deputy Commissioner of Commercial Taxes has no power to change the district wise seniority list but the Counsel would point out that the Deputy Commissioner of Commercial Taxes had prepared the integrated seniority list of Junior Assistants/Typists/Steno Typists for the purpose of giving promotions to the Junior Assistants working in East and West Godavari Districts. The learned Counsel also pointed out that the Tribunal also erred in observing that the changes made by the Deputy Commissioner of Commercial Taxes, Kakinada in District-wise seniority list are not in accordance with the A.P. State and Subordinate Service Rules and

made certain submissions in relation to the competency of the said authority. The learned Counsel also pointed out that the Tribunal erred in observing that the party respondents cannot claim the seniority according to that in the former Department and necessarily they had to forego their entire seniority accrued in the former Department and their seniority commenced afresh in Commercial Tax Department from the date of their joining only. The learned Government Pleader also would maintain that the Commercial Tax Division of Kakinada consists of East and West Godavari Districts and the District Collectors of both East and West Godavari Districts communicated the list of selected candidates to the Deputy Commissioner of Commercial Taxes, Kakinada and the said authorities sought for clarification from the District Collector, Kakinada vide letter dated 15-3-1977 and the said District Collector clarified vide letter dated 27-3-1977 that the merit list furnished to the Deputy Commissioner of Commercial Taxes is the order of ranking with reference to the dates of their first appointment and also requested to fix the candidates in the communal roster maintained for regular employees in the Unit. In the light of the fixation of the merit list, the Deputy Commissioner of Commercial Taxes had prepared the integrated seniority list and in principle the date of initial appointment was taken as criterion for the candidates of West Godavari as was done in the case of candidates of East Godavari and thus uniform

procedure was followed taking the date of initial appointment into consideration. The Counsel also would maintain that all these parties would stand on the same footing. The learned Counsel also further explained that in the facts and circumstances the ground of discretion also cannot be canvassed. The Counsel also would point out that the dates of regularization of the applicants in O.A. had not been altered at all which were originally given in the year 1993. The learned Counsel also pointed out to the positions of these respective parties shown in the seniority list. The Counsel had drawn the attention of this Court to the directions issued in O.A.No.3631/93 and based on these directions only the earlier periods of regularisation given to the respondents wrongly had been modified to set right the mistake committed by the Deputy Commissioner, Kakinada, Nodal Officer of both the Districts. Thus the earlier mistakes were rectified and the list was prepared on 11-2-2000. When uniform principles had been followed in relation to both the Districts and when such mistakes if any had been rectified, there cannot be any serious complaint relating to the same. The Counsel also would point out that the District Collector, West Godavari committed a mistake by keeping all the Junior Assistants at the top followed by Typists and followed by Steno Typists and the same is in accordance with law. The learned Counsel also had pointed out to the communal roster and the observance thereof in preparing the list. The Counsel also would

further contend that as against the irregularities which had occurred in preparation of the seniority list there cannot be any estoppel since the rule of reservation is a right conferred upon the reserved community by the Constitution of India and the same cannot be taken away. Hence the Counsel would contend that in the peculiar facts and circumstances the mistakes had been well rectified in the seniority list. The learned Government Pleader also had pointed out to certain findings recorded by the Tribunal and had pointed out to certain observations made in relation thereto.

7. Heard the Counsel on record and also perused the material available on record.

8 . <u>POINTS FOR CONSIDERATION FRAMED AND DECIDED BY THE TRIBUNAL:</u>

The Tribunal in O.A.No.845/2000 framed the following Points for consideration :

1. Whether the applicants and the party respondents were originally appointed on temporary basis under Rule 10(a)(i) prior to the selections by the D.S.C. ?
2. Whether their services were regularized with effect from the date of their temporary appointment or with effect from the date of their appointment through the D.S.C. ?
3. Whether the date of regularization in the case of party respondents were altered without how altering the same in the case of the applicants ?
4. Whether the merit lists were prepared by the District Collectors of West and East Godavari Districts ?

5. Whether the Deputy Commissioner of Commercial Taxes who is the nodal authority is justified in adopting the method as was followed in East Godavari District in respect of West Godavari District ?

6. The next question is whether the Deputy Commissioner of Commercial Taxes is competent to effect any revision in the date of regularization of the applicants without doing the same in the case of the party respondents ?

7. Whether the impugned orders of the Deputy Commissioner of Commercial Taxes, Kakinada dated 11-2-2000 can be assailed ?

Likewise, in O.A.No.1488/2000 the following Points had been framed by the Tribunal for consideration :

1. Whether the Deputy Commissioner of Commercial Taxes has power to change district seniority lists while preparing integrated seniority list ?

2. Whether the party respondents who came to Commercial Taxes Department at request on local cadre transfer basis can claim their seniority as given to them in the original department prior to the induction into the Commercial Tax Department ?

3. Are the changes made in the seniority lists in accordance with the A.P. Ministerial Services and A.P. State and Subordinate Service Rules ?

4. Are the changes effected by the Deputy Commissioner of Commercial Taxes in the seniority list contrary to the Presidential Order ?

5. Can such changes be made without notice to the affected parties ?

6. Can settled seniority list be unsettled after a long lapse of 14 years ?

The Tribunal on a consideration of the material available on record had recorded certain findings in relation thereto.

9 . CERTAIN RELEVANT FINDINGS RECORDED BY THE TRIBUNAL :

As already referred to supra, O.A.No.845/2000 was dismissed being devoid of merit by the Tribunal and O.A.No.1488/2000 was allowed to the extent of restoring the seniority of the applicants above the party respondents in the said O.A. but with a specific clarification that in all the other respects the impugned seniority list will remain in tact. The other O.As. also had been decided in the light of the detailed findings recorded in the aforesaid O.As. as already referred to supra. Though several findings had been recorded after discussing factual aspects in detail by the Tribunal, it may be pertinent to look at the relevant findings at paras 61, 63 and 65 recorded in O.A.No.845/2000 which read as hereunder :

> "The Commercial Tax Division, Kakinada, comprises of East and West Godavari Districts. A combined seniority list of Junior Assistants has to be necessarily prepared for the purpose of considering their promotion as Senior Assistant. When the selections were made by the respective District Collectors for the post of Commercial Tax Establishment in the respect districts and if the merit lists are not prepared uniformly, it will create chaos. In fact, this was what had happened. In view of this only, now it is decided that what was done in East Godavari District is to be adopted in respect of West Godavari

District also by taking the dates of initial appointment of the candidates into consideration as they were also selected by the District Selection Committee in the selections.

……

The dates of regularisation once ordered normally cannot be revised without proper authority. It is to be observed here that this Tribunal itself issued orders in O.A.No.2070/96 and batch dated 3-9-1999 and also in O.A.No.3631/1993 dated 4-4-1994 and also in O.A.No.5420/96 and batch dated 18-9-1998 for preparation of seniority lists in both the districts and also an integrated seniority list. The Hon'ble High Court also in W.P.M.P.No.34382/98 in W.P.No.28245/98 dated 20-10-1998 directed the respondents therein to prepare a draft seniority list of Junior Assistants/Typists/Steno-Typists both for the district and integrated seniority lists basing on G.O.Ms.No.711 dated 28-8-1986. Thus, it is clear that once the Court issued orders, the power of the Deputy Commissioner of Commercial Taxes, Kakinada who is the appointing authority does not get hindered in revising the dates of regularisation which is an action preceding assignment of seniority to the candidates. Thus, it is to be necessarily held that the Deputy Commissioner of Commercial Taxes, Kakinada is fully competent to alter the dates of regularisation in view of the Court's orders.

…..

As already stated above, the Deputy Commissioner of Commercial Taxes is competent to revise the seniority list in accordance with the Rules as well as the Court's direction. Thus, this cannot be assailed on this ground. The another material aspect is about the dates of alteration of the party respondent. The dates of regularisation of the applicants assigned to them were the same as the dates of their initial appointment prior to the D.S.C., selections viz., 16-7-1976. The party respondents and the applicants were similarly situated and hence the same principle that was applied to the applicants viz., adoption of their dates of initial appointment has to be necessarily applied in the case of the party respondents also viz., their dates of initial appointment, irrespective of the district in which they were selected as they all come under the one unit of the Deputy Commissioner of Commercial Taxes, Kakinada, who has jurisdiction over both the Districts and also who has to prepare a combined seniority list of Junior Assistants for the purpose of promotion as Junior Assistants. The argument that G.O.Ms.No.711 dated 28-8-

1986, was struck down by the Administrative Tribunal and therefore, it should not be followed, does not hold good for the reason that subsequently, the Hon'ble High Court directed revision of seniority list in accordance with G.O.Ms.No.711, dated 28-8-1986. It was also mentioned at para-9 of the impugned orders that the District Collector, East Godavari District, had clearly clarified that the candidates allotted to the Commercial Tax Department was itself prepared and communicated in the order of ranking, but, however, the order of communal roster to be maintained, should be fixed. Based upon the Judgment of this Tribunal in O.A.No.3631/1993, dated 4-4-1994 and also the directions of the Commissioner of Commercial Taxes, dated 21-7-1994, the Deputy Commissioner of Commercial Taxes, Kakinada also had finalized the seniority list of West Godavari District in his orders dated 18-10-1975. G.O.Ms.No.711, dated 28-8-1996 stipulated preparation of seniority lists in accordance with the dates of joining in the Department taking into consideration the entire temporary service, without disturbing the seniority list of Junior Assistants/Typists/Steno-typists appointed prior to D.S.C. selections. It was also seen from para 13 that irrespective of G.O.Ms.No.711, dated 28-8-1986, the Department had followed Rule 33(a) of A.P. State and Subordinate Service Rules. Thus, keeping in view Rule 33(a) of A.P. State and Subordinate Service Rules and also the orders of the Tribunal afresh seniority list was prepared and communicated on 11-9-1997 and called for objections and after receiving the same, final seniority list was issued. It was also stated that this seniority list was also placed before the Hon'ble High Court as the Writ Petition in W.P.No.28245/98 was still pending. It was also stated by the Deputy Commissioner of Commercial Taxes that though the impugned proceedings the same list is now published calling for objections with further improvements. It is also stated that the rule of reservation was strictly followed as stipulated under Rule 22 of A.P. State and Subordinate Service Rules. It is also seen that the objections filed by the concerned parties were duly examined and orders were issued. The contentions of the applicants herein wee also considered by the Deputy Commissioner of Commercial Taxes, Kakinada. It was also stated that the objections of the applicants are not tenable on the ground that the seniority lists are in accordance with the orders of the A.P. Administrative Tribunal issued in O.A.No.3631/1993, dated 4-4-1994 and also rule of reservation prescribed under Rule 22 of A.P. State and Subordinate Service Rules and also, the date of first appointment is taken as criteria as per Rule 33(a) of A.P. State

and Subordinate Service Rules in both the Districts. It was also stated that the Andhra Pradesh Administrative Tribunal in their orders dated 29-4-1997 in O.A.No.5696/95 clarified that the Department has to proceed further with the finalisation of the seniority list dated 16-9-95. In view of this only, a fresh integrated seniority list dated 11-9-1997 was issued to set right anomalies and distortions in the list. It was also stated that a uniform procedure was adopted by the Deputy Commissioner of Commercial Taxes, Kakinada in respect of the candidates who have been working prior to the selection by D.S.C. and hence, their probation was declared from the date of their initial appointment on the ground that they have been working continuously in regular vacancies without any break. It was also stated that this is in accordance with the powers vested under Rule 33(a) of A.P. State and Subordinate Service Rules. It was also stated that even without reference to the G.O.Ms.No.711, dated 28-8-1996, the seniority list issued through the impugned orders is in consonance with Rule 33(a) of A.P. State and Subordinate Service Rules. It was also stated by him that this Tribunal observed in their orders dated 3-9-99 in O.A.No.2070/96 and batch that the seniority list of Junior Assistants prepared earlier as per the orders of the Tribunal in O.A.No.3631/93, dated 4-4-94 has not been finalized. In view of this, the present impugned seniority list was issued in order to put a finality to this issue of seniority of Junior Assistants which has taken several forms and turns and also, has been agitated before the Courts for several times in several cases."

10. <u>PLEADINGS OF THE PARTIES:</u>

Elaborate pleadings were made in W.P.No.9009/2002, the affidavit filed in support of the Writ Petition narrating all the details, the relevant counter affidavits taking specific stands and also a reply affidavit in detail. The stand taken by the Government in the counter affidavit in the aforesaid Writ Petition is almost akin to the stand taken by the Government in W.P.No.19243/2003. In the other Writ Petitions

referred to supra also, the pleadings are substantially on the same lines. On a careful scrutiny it is no doubt true that certain of the orders made in the O.As. had not been challenged but evidently the affected parties or the aggrieved parties apprehending reversion as a resultant consequence with the leave of the Court filed certain Writ Petitions challenging the common order aforesaid. The submissions and the specific stand taken by the respective Counsel already pointed out supra virtually had been reiterated in detail in the respective pleadings of the parties. Certain applications W.P.M.P.No.4517/2003 and others were moved to implead similarly placed persons as parties and it is needless to say that since the parties are fighting the litigation on question of principle relating to validity or otherwise of the seniority list it is needless to say that all these parties who may be ultimately affected would be necessary and proper parties to the present lis.

11. Mohan Rao and Md.Yousuf, the writ petitioners, questioned the orders made in O.A.NO.845/2000 dated 24-2-2002 and also the seniority list dated 11-2-2000 which had been impugned in the O.A. Several of the details and the particulars relating to the ranking of the applicants, the unofficial respondents and the writ petitioners, non-parties to the litigation in the Tribunal who had questioned the common order and unofficial respondents in the respective Writ

Petitions also had been shown in detail in the respective affidavits filed in support of the Writ Petitions. It is stated that the writ petitioners in W.P.No.9009/2002 were initially appointed as Junior Assistants on adhoc temporary basis on 16-2-1976 and the unofficial respondents were appointed on adhoc temporary basis as Junior Assistants in the year 1974. The recruitment to the posts of L.D.Cs., Typists and Steno-typists was withdrawn from the purview of A.P. Public Service Commission and entrusted to District Selection Committees, in short referred to as DSCs hereinafter, throughout the State for regular recruitment process and these Committees are headed by the concerned District Collectors and these DSCs make selections basing on merit and communal roster while forwarding the select list to the appointing authorities. It was specifically pleaded that in September 1976 the petitioners and unofficial respondents appeared before the District Selection Committee, in short referred to as DSC hereinafter, and the DSC forwarded the select list to the 1st respondent and the ranking assigned also had been specified in the affidavit. In view of the regular selections by DSC the petitioners and the unofficial respondents were regularized in the cadre of Junior Assistants and the petitioners who were holding higher ranks in the merit list and the unofficial respondents were holding lower ranks in the merit list and the seniority list dated 21-5-1981 was issued by the 1st respondent and the ranking shown therein and the particulars

thereof also had been narrated. The State Government had created certain Commercial Tax Divisions and in the process Kakinada Commercial Tax Division was bifurcated as Kakinada and Eluru Commercial Tax Divisions i.e., 15-6-1981. The litigation with respect to the said division went upto Supreme Court and was settled by holding that nine Commercial Tax Divisions created in G.O.Ms.No.551, dated 24-5-1976 will be units for the purpose of seniority and promotion. In view of the above, the Government issued G.O.Ms.No.900, dated 8-10-1991 specifying that for these Divisions, the 1st respondent would be the Nodal Officer. The integrated seniority list of Kakinada and Eluru were finalized in the cadre of Junior Assistants vide proceedings dated 10-5-1993 and subsequently final seniority list of Senior Assistants of combined Kakinada Division by proceedings dated 5-10-1993 of the 1st respondent and both these reflected the correct factual and legal position in the light of the settled principles of service jurisprudence. It is stated that it is in accordance with the DSC merit list, the ranking and also Rule 22 of the A.P. State and Subordinate Service Rules, 1962 and the said seniority list had attained finality. It is stated that in the year 1955, the 1st respondent issued a show cause notice relating to the provisional integrated seniority list of Junior Assistants, Typists and Steno Typists of East and West Godavari Districts stating that the Tribunal in O.A.No.3631/93 and Batch dated 4-4-1994 issued

a direction to prepare seniority list of Junior Assistants, Typists and Steno-typists from 18-10-1975 onwards. It is stated that the provisional seniority integrated seniority list reflected the same dates of regularization as per the rankings assigned in the merit list of DSC specified supra. Prior thereto, the Government issued G.O.Ms.No.711, dated 28-8-1996 wherein certain contrary directions had been given and basing on the said G.O., show cause notice dated 11-9-1997 along with provisional seniority list had been issued wherein the dates of regularization issued on the basis of DSC merit ranking had been altered to the date of initial appointment in the light of the aforesaid G.O. The said G.O.Ms.No.711 was questioned before the Tribunal in O.A.No.5420/96 and Batch and the same was set aside by the Tribunal by the Judgment dated 18-9-1998 and the same had been questioned by W.P.Nos.28245/98 and 19636/99 which resulted in dismissal by virtue of which the setting aside of the G.O.Ms.No.711 had attained finality and hence specific stand was taken that the show cause notice issued or the consequential proceedings impugned in the impugned proceedings dated 11-2-2000 would be illegal for the reason that the same had been issued and prepared in the light of G.O.Ms.No.711 which had been set aside by the Tribunal and confirmed even by the writ Court. Several grounds in detail also had been raised in this regard.

12. Respondents 1 and 2 filed counter affidavit wherein specific stand

was taken that the Collector, Kakinada communicated the select list of candidates covering 81 L.D.Cs. 13 Typists and 17 Steno Typists under Group-IV Services and allotted to Commercial Tax Department. While communicating the above list the Collector had shown all the Junior Assistants at the top i.e., 1 to 8 and Typists from 82 to 94 and Steno Typists from 95 to 111. The Collector in proceedings dated 27-3-1997 clarified that the list of candidates selected and allotted to the Department was as prepared and communicated in the order of ranking with reference to the dates of their first appointment as reported Deputy Commissioner of Commercial Taxes, Kakinada and he had further clarified that the seniority of the candidates in the order of communal roster maintained should be fixed. It does not imply that the Junior Assistants shall be made senior most and next Typists and next Steno-typists and the Deputy Commissioner of Commercial Taxes, Kakinada had clubbed these three categories with reference to their first appointment keeping in view the communal roster within each list in stead of following seriatim given by the Collector. Thus the selection of candidates was made by the DSC in 1976 was rearranged taking into consideration the petitioners initial appointment but not basing on categorization of the candidates as Junior Assistants, Typists and Stenos. Further the seniority list prepared from time to time was superceded by the seniority list of Junior

Assistants/Typists/Junior Steno-typists dated 11-2-2000. Specific stand was taken that the seniority list prepared is in order. It was further stated that the Tribunal rendered Judgment in O.A.No.3631/93 and in some other cases and directed to prepare a District wise seniority list of candidates as on 18-10-1975 and 30-4-1994 and pursuant to the Judgment, the Commissioner of Commercial Taxes, Hyderabad vide proceedings dated 21-7-1994 and 5-8-1994 issued certain parameters and directions to all Deputy Commissioners in the State and in pursuance of the above orders in Ref.E2/1445/94 dated 27-9-1994 the seniority list of East Godavari was finalized and likewise by proceedings B2/313/94 dated 8-8-1995 the list of West Godavari also had been finalized and basing on the District lists finalized by the Deputy Commissioner of Commercial Taxes, Kakinada and Eluru, an integrated seniority list was prepared on 16-9-1995 and the same was communicated to all the individuals. Aggrieved by the said proceedings O.A.No.5696/95 had been filed and initially stay was granted and the same had been vacated on 29-4-1997 and directed the respondents to proceed further with finalisation of the seniority list of U.D.Cs. vide orders in O.A.No.5696/95 and V.M.A.No.22/96. No doubt several other details relating to the knowledge of stay and vacation thereof had been pleaded. While the matters stood thus, Government issued G.O.Ms.No.711 dated 28-8-1996 directing to prepare the seniority list

strictly in accordance with their dates of joining in the District taking into consideration the entire temporary service without disturbing the seniority list of the Junior Assistants, Typists and Steno-typists prior to DSC selections. But the Commissioner of Commercial Taxes in proceedings dated 3-10-1996 requested all the Deputy Commissioners in the State not to take any action to implement the orders in G.O.Ms.No.711, dated 28-8-1996 till further orders in view of the orders of the Tribunal dated 22-4-2000 in O.A.No.845/2000. Subsequently, the Tribunal in O.A.No.4062/98 and O.A.No.4072/98 dated 22-6-1998 i.e., after 11-9-1997 had also directed not to take any other action in pursuance of G.O.Ms.No.711 but by that time, the list dated 11-9-1997 was released keeping in view the existing guidelines. It is stated that the seniority of a person in a service or class or category or grade shall be determined by the date of first appointment to such service as per Rule 33(a) of the A.P. State and Subordinate Service Rules, 1962 which is not superceded and had been in force even on the said date. Apart from this several other Rules i.e., Rule 10(a)(i), 22, 23(a), 33(a), (b), 34, 36(i)(iii) of A.P. State and Subordinate Service Rules had been relied upon in this regard. Further specific stand was taken that following Rule 33(a) after calling for objections omissions and the mistakes had been rectified. Several other grounds in detail also had been raised in this regard.

13. A counter affidavit was filed by respondents 8 and 9 wherein

virtually the same stand had been reiterated in this Court and their ranking in detail also had been shown and all other aspects had been specifically denied. Specific stand was taken that the case of the proceeding of the 1st respondent is perfectly legal, valid and the same is not based on G.O.Ms.No.711 only but the other aspects had been taken into consideration.

14. A reply affidavit in detail had been filed wherein again the original stand had been repeated and stress was laid on the setting aside of G.O.Ms.No.711 and the resultant effect thereof on the impugned seniority list. The other pleadings except in W.P.No.19243/2003 filed by the Government are also almost on similar lines.

15. As far as the stand taken by the Government in W.P.No.19243/2003 in substance is the same stand as taken in the counter affidavit filed in W.P.No.9009/2002. Reference was made to G.O.Ms.No.900 Revenue, dated 8-10-1991 and also the necessity to prepare integrated seniority list and how the proceedings dated 11-2-2000 came into existence. Reference was made to O.A.No.1488/2000 and the details relating to transfers of probationers and approved probationers had been narrated. The observations made by the Tribunal in paras 64 and 65 of the Judgment in O.A.No.845/2000 also had been referred to and certain findings in

O.A.No.1488/2000 also had been pointed out. It is stated that certain individuals including the unofficial respondents in O.A.No.1488/2000 came to this Department selected by the Joint Screening Committee from various Departments at their own request and appointed by the Commissioner of Commercial Taxes, Hyderabad on the following conditions:

1. They should take last rank below the probationers and approved probationers working in the Department.
2. They should give declaration that they have come on transfer at their request without claiming any seniority and promotion.

It was further stated that in the show cause notice issued for finalizing the integrated seniority list of Junior Assistants/Typists/Stenos their names were shown after the candidates who were probationers at the time of their transfer to the Commercial Tax Department. In the first show cause notice dated 11-9-1995 they were given same ranking and after issue of the first show cause notice dated 11-9-1995 they had filed O.A.No.695/96 for redressal and while the matter stood so they had filed objections to the show cause notice that they should be placed below the approved probationers. Accordingly, while passing the final orders the objections had been examined with reference to the conditions and A.P. Ministerial Service Rules. As per Rule 16(1) of A.P. Ministerial Service Rules which exists prior to 1990, the persons seeking transfer from one Department to another

Department shall forego their rights to seniority on the basis of first appointment and take last rank in the list of Probationers and approved Probationers as the case may be in the administrative unit to which they seek transfers. Accordingly they had lost their seniority but they were placed below the approved probationers who were working at the time of their transfer to the Commercial Tax Department in the year 1985. After narrating the particulars specific stand was taken that there is no error in giving such placements to the unofficial respondents and the integrated seniority list is in strict confirmity with the Rules and procedure in vogue and hence the observations in O.A.No.1488/2000 are erroneous and are liable to be set aside .

16. The pleadings in the other Writ Petitions i.e., W.P.Nos.9101/2002, 9781/2002 and 9446/2002 are almost on similar lines by the writ petitioners and also the contesting respondents. Certain particulars furnished relating to the ranking may be considered at this juncture for the purpose of appreciating the controversy. In W.P.No.9009/2002, at paras 4 and 5 it had been specified as hereunder :

> In September, 1976 the petitioners and the unofficial respondents appeared before the District Selection Committee and the D.S.C. forwarded the Select List to the 1st respondent wherein the ranks of the petitioners and the unofficial respondents is as follows :

Name Post Category Rank

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1. T. Mohan Rao (1st petitioner) LDC O.C. 1

2. Md.Yousuf (2nd petitioner) LDC O.C. 8

3. T.Veerabhadra Rao Steno

(4th petitioner) typist B.C. (B) 102 of E.G.

4. Ch.Kanaka Raju LDC B.C. (B) 10

(5th petitioner)

5. N.L. Prasad (6th respondent) LDC O.C. 44

6. P.Narasimha Rao

(7th respondent) LDC O.C. 45

7. A.V.Satyanarayana Murthy LDC B.C. (B) 7

(8th respondent)

8. B.S.Prakasa Rao L.D. Steno B.C. (B) 3

(9th respondent)

In view of the regular selections by DSC the petitioners and the unofficial respondents are regularized in the cadre of Junior Assistants. The petitioners who were holding hither ranks in the Merit List were regularized with effect from 17-2-1976 and the unofficial respondents who were holding lower ranks in Merit List were given regularization dates subsequent to the petitioners' regularization date in accordance with the Rule of Reservation etc., and a seniority list dated 21-5-1981 was issued by the 1st respondent wherein the

petitioners and respondents were shown in the following order of seniority.

Name Seniority Date of

No. Regularisation

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1. T. Mohan Rao (1st petitioner) 69 17-02-1976

2. Md.Yousuf (2nd petitioner) 73 17-02-1976

3. T.Veerabhadra Rao (4th respondent) 105 1-11-1976

4. Ch.Kanaka Raju (5th respondent) 200 01-12-1976

5. N.L. Prasad (6th respondent)

(A.V.A.S.D. Prasad) 174 01-12-1976

6. P.Narasimha Rao (7th respondent) 176 01-12-1976

7. A.V. Satyanarayana (8th respondent) 195 01-12-1976

8. B.S. Prakasa Rao (9th respondent) 208 01-12-1976

In W.P.No.9101/2002 at paras 4 and 5 it was stated :

> In September, 1976 petitioners No.3 to 5 and the unofficial respondent appeared before the District Selection Committee and the Select List was communicated to the 2nd respondent wherein petitioners No.3 to 5 and the unofficial respondents are shown as follows :

Name Post Category Rank

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1. Ch.V. Gopala Krishna Murthy Jr. Asst. O.C. /P.H. 48 of E.G.

2. Y. Nagapathi Rao Jr. Asst. B.C.(B) 7 of W.G.

3. K. Venkata Reddy Jr. Asst. O.C. 9 of W.G.

4. T.Veerabhadra Rao Steno

Typist B.C. (B) 102 of E.G.

In view of the regular selections by the D.S.C. petitioner No.3 to 5 and the unofficial respondent were regularized and the seniority list dated 21-5-1981 was issued by the 2nd respondent wherein the petitioners and the unofficial respondent are shown as follows :

No. in Name Date of Cadre

seniority list Regularisation

S.No.34 P. Satyanarayana Murthy 20-11-1974 Jr. Asst.

S.No.36 I.V. Satyanarayana 14-02-1975 Jr. Asst.

S.No.125 Ch.V.Gopala Krishna

Murthy 17-02-1976 Jr. Asst.

S.No.145 Y.Nagapathi Rao 19-03-1976 Jr. Asst.

S.No.146 K.Venkata Reddy 19-03-1976 Jr. Asst.

S.No.105 T.Veerabhadra Rao Steno

(respondent) 01-11-1976 typist

In W.P.No.9781/2002 at para-4 it was specified :

No. in Name Date of Cadre

Seniority regularisation

List

S.No.48 P.Satyanarayana Rao 17-02-1976 Jr. Asst.

S.No.74 S.Suryanarayana 17-02-1976 Jr. Asst.

S.No.42 K.R. Satyavalli 17-02-1976 Typist

S.No.93 P. Jayakumari 17-02-1976 Steno Typist

S.No.150 T.Veerabhadra Rao

(respondent) 01-11-1976 Steno Typist

Likewise, in W.P.No.9446/2002 at para-4 it was specified as hereunder :

> In view of the regular selections by the D.S.C in September 1976 petitioner No.3 to 4 and the unofficial Respondent were regularized and the seniority list dt.08-10-1991 was issued by the 2nd Respondent wherein the petitioners and the unofficial Respondent are shown as follows :

No. in Name Date of Cadre

Seniority Regularisation

List

S.No.34 B. Bhasker Rao 14-02-1975 Jr. Asst.

S.No.36 G. Appa Rao 13-02-1976 Jr. Asst.

S.No.89 B. Venkata Rao 17-02-1976 Typist

S.No.97 P. Appa Rao 17-02-1976 Steno

Typist

S.No.150 T.Veerabhadra Rao 01-11-1976 Steno

(respondent) Typist

Inasmuch as in substance the respective stands of the parties in these pleadings being the same, the said pleadings are not repeated again.

17. <u>RELEVANT STATUTORY PROVISIONS</u> : Relevant Rules in this regard Rule 10, 23(a), 33(a) and (b) of the A.P. State and Subordinate Service Rules read as hereunder :

> **Rule 10: Temporary appointment : (a)(i)(1):** Where it is necessary in the public interest to fill emergently a vacancy in the post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily otherwise than in accordance with the said rules.
>
> (2) No appointment under sub-clause (1) shall ordinarily be made of a person who does not possess the qualifications, if any, prescribed for the said service, class or category. Every person who does not possess such qualifications and who has been or is appointed under sub-clause (1) shall be replaced as soon as possible by a person possessing such qualifications.

(ii) Where it is necessary to fill a short vacancy in a post borne on the cadre of a service, class or category and the appointment of the person who is entitled to such appointment under these rules and the special rules, would involve excessive expenditure on traveling allowance or exceptional administrative inconvenience the appointing authority may appoint any other person who possesses the qualifications, if any, prescribed for the said service, class or category.

(iii) A person appointed under clause (i) shall, whether or not he possesses the qualifications prescribed for the service, class or category to which he is appointed, be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under the said rules.

(iv) A person appointed under clause (i) or (ii) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointments to such service, class or category.

(v) The appointing authority shall have the right to terminate the service of any person in the post to which he is appointed under clause (i) or clause (ii) at any time without assigning any reason and without notice.

(b) A person appointed to any part-time post created in lieu of a whole-time post borne on the cadre of a service, class or category shall not be regarded as a probationer in such service nor shall he be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category.

(c) Notwithstanding anything contained in these rules, if and when a temporary post is created as an addition to the cadre of any service, class or service and the holder thereof is required by the State Government to possess any special qualifications, knowledge or experience any person who possesses such qualifications, knowledge or experience, and considered to be the best fitted to discharge the duties of such post may, irrespective of other considerations, be appointed to that post by the appointing authority, but the person so appointed shall not, by reason only of such appointment, be regarded as a probationer in such service, class or category nor shall he acquire thereby any preferential right to future appointment to such service, class or category.

(d) No person appointed under clause (i) or clause (ii) shall be eligible to an increment in the time scale of pay applicable to him unless he passes of the test, completes the training, or acquire the qualification prescribed as a condition for the grant of the first, the second or any subsequent increment, to a member of the service, class or category.

Rule 23. (a) Date of commencement of probation of persons first appointed temporarily :- If a person, having been appointed temporarily under sub-rule (a) or sub-rule (c) of Rule 10 to a post borne on the cadre of any service, class or category or having been appointed to any service, class or category otherwise than in accordance with the rules governing appointment thereto is subsequently appointed to any service, class or category in accordance with the rules, he shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine.

Rule 33. Seniority :- (a) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation under Rule 10(a)(iv), 10(c), 16, 37(d), or 42(d) his seniority shall be determined by the date of commencement of his service which counts towards probation.

This sub-rule shall be deemed to have been in force on and from the 1st October, 1933 in the case of State Services and on and from the 1st October, 1934 in the case of subordinate services; but shall not effect the seniority of any member of a service, which may have been fixed expressly or by implication before the 19th November, 1941 or any orders as to seniority which may have been passed by competent authority before the 19th November, 1941:

Provided that the seniority of a probationer or approved probationer in a service, class, category or grade from which he stood reverted on the 1st November, 1956 or prior to that date, shall be determined in the State-wide gazetted posts and the non-gazetted posts in the Departments of the Secretariat and the offices of the Heads of Departments, with reference to the notional date of continuous officiation arrived at by adding the total length of officiation with or without breaks in that

service, class, category or grade prior to the 1st November, 1956 to the date of reappointment made thereafter in accordance with the provisions of sub-rule (c) of Rule 8; but it shall be disturb the inter se seniority which obtained in the Andhra Stage.

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of procedure among them; and where such order has been fixed, seniority shall not determined in accordance with it:

Provided that for the purpose of promotions to the next higher category of gazetted posts, the inter se seniority of persons recruited direct to the subordinate services during the period commencing on the 1st November, 1956 and ending with 31st December, 1973, separately in Andhra and Telangana regions, shall be determined by the ranking assigned by Andhra Pradesh Public Service Commission in the common ranking list or by the competent authority as the case may be, after following the rule of reservation.

Likewise, **Rule 25** of A.P. Ministerial Service Rules dealing with **Probation** also may be relevant which reads as hereunder :

(1) Every person appointed to a category by direct recruitment shall be on probation for a period of two years on duty within a continuous period of three years; and every person appointed to any category or grade, by promotion or transfer, shall be on probation for a total period of one year on duty within a continuous period of two years:

Provided that a person who, immediately before the 1st November, 1956, was a member of the Hyderabad General Service (Subordinate Service) and was absorbed on or after the 14th July, 1961 into this service as Superintendent from the post of or as Senior Assistant from the post of Second Grade Stenographers, First Grade Stenographer/or the Second Grade Typist, shall not be required to undergo the probation aforesaid;

Provided further that in respect of persons transferred from the Central Government Service consequent on the transfer of Employment Exchange and training Centres to the State Government on the 1st November, 1956:

(i) if they have put in not less than two years of continuous service within the period of three years immediately before the said date in the category they shall be deemed to be approved probationers in that category in this service and shall be eligible for confirmation and leave as approved probationers; and

(ii) if they have put in less than three years of continuous service immediately before the said date in the category, they shall be deemed to be regularly appointed, in this service and shall be eligible for being declared as approved probationers after satisfactory completion of the period of two years prescribed in this rule.

Explanation : The term 'grade' occurring in this sub-rule shall mean the grade in a post such as Store-Keeper, Grade I or Grade II.

(2) The period of service rendered as Deputy Tahsildar in the Andhra Pradesh Revenue Subordinate Service shall not count for probation in the category of Superintendents in the Office of the Commissioner of Land Revenue.

(3) The period of service rendered as Assistant Commercial Tax Officer in the Andhra Pradesh Commercial Taxes Subordinate Service shall not count for probation in the category of Superintendents in the Office of the Commissioner of Commercial Taxes.

(4) The period of service rendered as Manager (Co-operative Sub-Registrar), or as Superintendent (Senior Inspector of Co-operative Societies), in the office of the Registrar of Co-operative Societies shall count for probation in the category of Superintendents, or Senior Assistant, as the case may be, in the said office.

18. <u>POINTS FOR CONSIDERATION :</u>

1. Whether the Writ Petitions by non-parties to the lis before the Tribunal be maintained without first taking recourse to approach the Tribunal ?

2. Whether the impugned seniority list is in accordance with law and the prior directions issued by the Courts from time to time ?

3. Whether the impugned order of the Tribunal be sustained or liable to be set aside ?

4. If so, to what relief the writ petitioners are entitled to in the facts and circumstances of the case ?

19. <u>POINT NO.1</u>: The initial attack relating to the maintainability of the Writ Petitions by the non-parties to the lis before the Tribunal in the light of the ratio laid down in Chandra Kumar's case referred (1) supra had been highlighted in elaboration. The said objection relating to the maintainability of the Writ Petitions need not detain this Court any longer for the reason that these are affected parties and virtually it had been stated that since they are facing threat of reversion by virtue of the impugned order, the prior applications praying for leave had been moved and suitable orders had been obtained and in view of the same it cannot be said that these Writ Petitions are not maintainable. There is yet another reason that it is but always essential to implead all the necessary parties and it may be in certain cases where the seniority lists are questioned since the persons who

would be affected by virtue of the chain reaction would be too numerous, all the parties may not be impleaded. But at the same time, when the parties aggrieved of the decision or affected by such order impugn such order by filing of the Writ Petition with the leave of the Court, the same cannot be objected to on the ground of maintainability and hence this ground of attack made by the learned Counsel representing the unofficial respondents cannot be sustained.

20. <u>POINTS 2 & 3 :</u> The seniority list in question had been impugned on several grounds and as already referred to supra all the orders made in the O.As. in the Batch had not been questioned. But however briefly the orders made in O.A.No.845/2000 and O.A.No.1488/2000 had been questioned on the ground that the writ petitioners are affected by the said orders. The relevant Rules in relation thereof, Rule 10, 33-A, 33-B, 23-A of A.P. State and Subordinate Service Rules and Rule 25 of the A.P. Ministerial Service Rules already had been referred to supra. Reliance also was placed on **M.Shyam Sunder and others Vs. Government of Andhra Pradesh , Rana Ranadhir Singh Vs. State of U.P. , Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji , Kuntesh Gupta vs. Management of Hindu Kanya Maha , V. Murali Vs. Government of Andhra Pradesh , P.Prakash Archbald Vs.**

Government of Andhra Pradesh, S.A. Hussain Vs. State , State of A.P. Vs. Koka Subramaneswara Rao , Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra . Apart from these decisions, several submissions in elaboration had been made relating to the fixation of seniority, settlement of seniority list and the limitations imposed in interfering with such seniority lists by Courts and also yet another ground that at any rate after a long lapse of time, if such seniority lists drawn up on careful exercise if interfered with, it would be detrimental to good governance and good administration. Equally submissions at length were made drawing the attention of this Court to the prior directions issued by the Tribunal and also orders made in the Writ Petition relating to confirming the orders of the Tribunal setting aside G.O.Ms.No.711 and had pointed out several anomalies and irregularities in the drawing up of the impugned seniority list. These factual details in elaboration had been narrated in the respective pleadings of the parties both before the Tribunal as well as before this Court.

21. The writ petitioners in W.P.No.9009/2002 belong to Kakinada Commercial Division comprising of both East and West Godavari Districts and they were appointed in West Godavari District as Junior Assistants temporarily in the year 1976. The unofficial respondents belong to Kakinada Commercial Tax Division comprising of East and West Godavari Districts, appointed in West Godavari District as

Junior Assistants/Stenos in the year 1974 temporarily. The details relating to the regular appointments pursuant to the selections made by DSCs also had been narrated in elaboration. The District Collectors of East and West Godavari Districts being the Chairman of DSC in 1976 have communicated the merit and ranking list to the appointing authority i.e., the 1st respondent/Deputy Commissioner of Commercial Taxes, Kakinada. The appointing authority issued orders of regularization declaring the probation and in the said process in the DSC selection ranking was assigned in the light of Rule 22, 23-A of the A.P. State and Subordinate Service Rules and Rule 25 of the A.P. Ministerial Service Rules which had been already referred to supra. It is needless to say that from the language employed it is clear that the appointing authority is vested with the discretion which may have to be exercised no doubt reasonably in fixing the date of regularization. Thus, the services were regularized as on 17-2-1976. In the year 1983 the District Seniority list was prepared. The District seniority list prepared in the year 1981 was challenged in R.P.No.817/83 and the same had been disposed of stating that when an opportunity had been given earlier the same had not been availed of by the petitioners therein and whether they will be entitled to make a further representation will have to be decided by the 1st respondent/Deputy Commissioner of Commercial Taxes, Eluru himself. In the said R.P. it was observed :

"The petitioners also attack the final seniority list of Junior Assistants, Typists and Steno-typists communicated on 12.3.1981 by the Deputy Commissioner of Commercial Taxes, Kakinada-1st respondent on the ground that the Rule of Reservation prescribed by Rule 22 of the A.P. State and Subordinate Service Rules have not been complied with. They also state that Steno-typists have been included in the list against the Rules. They also refer to the case of Respondent 27 who was transferred to West Godavari District at his own request but was given a higher authority than that permissible under the Rules. The most important point mentioned is that the seniority list was published as final seniority list on 12.6.1981 without inviting representations on the seniority list circulated on 1.3.1961 and finalizing the same after considering the representations. The first petitioner also states that he filed a representation against the impugned final seniority list and his representation has not been considered.

From the material papers furnished by the petitioners however, it appears that the Deputy Commissioner of Commercial Taxes, Kakinada communicated a seniority list on 1.3.1981 and that the petitioner No.1 gave a representation to the Deputy Commissioner of Commercial Taxes, Eluru against this list. The date of this representation has not been mentioned in the copy of the representation given in the material papers but it appears from the contents of the representation that it was submitted late after the due date. In the absence of a counter affidavit by Respondent No.1 I am not in a position to state whether the impugned seniority list dated 12.6.1981 prepared and communicated to the petitioners as per the Representation Petition was finalized after circulating a provisional list and considering the representations received against the provisional list. It appears to me that the petitioners have filed this Representation Petition after failing to make representations against the provisional authority list in time. In all fairness I would dispose of this R.P. by giving a direction to the 1st respondent to finalise the seniority list after giving an opportunity to the petitioners to make their representations against the same in case they had not been given an opportunity to make their representations against the provisional seniority list. If an opportunity had been given earlier and the petitioners had not availed of it, whether they will be entitled to make a further representation will have to be decided by the 1st respondent himself. With these observations the Representation Petition is disposed of with no order as to costs".

22. The seniority lists of East and West Godavari Districts were prepared independently in the year 1981 and an integrated list was prepared by adjusting the Junior Assistants, Typists and Steno-Typists of both the Districts in the year 1981 for the purpose of giving promotions to the post of Senior Assistants which is a divisional post. The said integrated seniority list was questioned in O.A.No.41794 to 41796 of 1990 and the Tribunal directed that Rule 22 of A.P. State and Subordinate Service Rules to be followed in this regard. The unofficial respondents in W.P.No.9009/2002 filed O.A.No.17886 to 17897 of 1990 assailing the orders of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad who had rejected their request for giving temporary dates of appointment from the year 1974 which is adhoc temporary as per Rule 10(a) of the A.P. State and Subordinate Service Rules referred to supra and the Tribunal by order dated 9-2-1998 dismissed the said O.As. holding that there is no irregularity or illegality in regularizing the services of the respective parties. It is needless to say that the writ petitioners in W.P.No.9009/2002 are arrayed as respondents in the aforesaid O.As. In view of the orders dated 4-9-1992 in O.A.No.41794 and 41796 of 1990, the Deputy Commissioner of Commercial Taxes, Kakinada once again prepared the Junior Assistants seniority list being the Nodal authority of Kakinada Division taking Rule 22 and

Rule 33 of A.P. State and Subordinate Service Rules and also following the merit and ranking assigned by the respective DSCs of both East and West Godavari Districts. It may be appropriate to have a look at the relevant portions of the order in this batch at paras 9, 10 and 11 which read as hereunder :

> "Where there is no specific mention in the impugned order about the manner in which the seniority list has been drawn up, taking into account the contentions of the applicants, it appears to us that it is clear that the applicants have been adjusted only against roster points applicable to them in regard to the particular category of BC, and the relevant provisions of Rule 22 above, that in such a case they should be allotted to OC category, has not been followed. It is well settled that any ranking list given by the Service Commission (or in the case of DSC which is the successor to the PSC) should determine seniority. As the copies of the Government memos cited in the counter have not been produced before us, we do not propose to anything in regard to the matters covered by these memos, but it appears to us as far as this case is concerned that, the ranking given by the District Collector in regard to the applicants should be applied in drawing the seniority list in the manner clearly detailed in General Rule 22. Thus, if the roster point in the particular BC community is not immediately available, the applicants have to be necessarily adjusted in the next OC slot. To the extent that this has not been done, the seniority list has to be interfered with.
>
> In the counter, a mention has been made that it is common seniority list prepared for all Junior Assistants, Typists and Steno-typists. While Typists and Steno-typists are feeder categories for the posts of Senior Assistant, if the seniority list now prepared is of Junior Assistants, and if Typists and Steno-typists have been put in this seniority list prior to their conversion, it would not be correct to do so. No doubt the authorities will verify this position also and prepare the seniority list accordingly.
>
> In the circumstances, we direct that the impugned seniority list be revised in accordance with our observations as above taking into account the provisions of the Rule 22 of the General

Rules and by adjusting the applicants and others similarly circumstanced. On the petitioners claims that he is at Serial No.10 in the merit list selected by the District Selection Committee and approved by the Collector and he belongs to BC-B Group and in the seniority list he is shown far below Serial No.10. If there is a vacancy in the roster for the particular BC group, he should be kept in that particular slot intended for the concerned Group in BC category. If there is no vacancy even in the first ten places in the roster for particular BC group, that candidate should necessarily be shown at Serial No.10, even when that point at Serial No.10 is intended to be filled by OC group. He cannot go below the place in spite of his getting rank in the select list. If this principle has not been followed the respondents are directed to follow the said principles in preparing the seniority list with reference to the rank assigned by Selection Committee subject to Rule 22 of the State and Subordinate Service Rules. No Steno-typist/Typist should be included in the seniority list of Junior Assistants, except in cases of Steno-typist/Typists converted to Junior Assistants as on 1-3-1981, the crucial date in this case. Until so done, any promotions made to the higher category of Senior Assistant will be purely adhoc and shall be subject to review. The respondents are directed to complete the above exercise in accordance with rules as per our directions above, taking into account any other Court directions applicable, within a period of two months from the date of receipt of this order. The OAs and MAs are accordingly disposed of. All the interim orders are vacated. No costs."

As per the directions in O.A.No.3631/93 dated 4-4-1994, the Commissioner aforesaid issued certain parameters for preparation of seniority list wherein it was specified that the ranking and the merit to be followed. Prior thereto in the light of the ranking assigned in the DSCs referred to supra, the seniority list was prepared after calling for objections from both the Departments by the Nodal authority on 5-10-1993 and the details relating to the respective seniorities shown of the contesting parties in the list also had been narrated in detail.

Subsequent thereto, as mentioned above, in the light of the directions in O.A.No.3631/93 show cause notice was issued for preparation of the final seniority list on 16-5-1995 but however when the same was likely to be finalized as per the directions in O.A.No.3631/93, G.O.Ms.No.711 dated 28-8-1996 was issued wherein temporary service rendered prior to the selection of DSC of 1976 to be given to unsuccessful candidates who had secured lesser merit and ranking in the said DSCs basing on the provisional seniority list. It is pertinent to note that this G.O.Ms.No.711 cannot be sustained at all since the same had specified contrary directions. Several of the details in this regard had been specified in the reply affidavit filed in W.P.No.89009/2002. Be that as it may, O.A.No.5420/96 and batch had been filed for quashing G.O.Ms.No.711 and the said G.O. was quashed by the Tribunal by the order dated 18-9-1998 and questioning the same W.P.Nos.28245/98 and 19636/99 were filed by the Government as well as the private parties and a Division Bench of this Court by a Common Judgment after referring to the orders made in O.A.No.5339/95 and Batch and also O.A.No.3631/93 and Batch and the orders issued by the 2nd respondent therein dated 5-8-1994 stipulating the parameters and also further placing reliance on several decisions i.e., **V. Sreenivasa Reddy vs. Government of Andhra Pradesh , B.S. Bajwa Vs. State Of Punjab , Davinder Bathia Vs. Union of India , N.KOTAM RAJU Vs. REGIONAL**

DY.DIRECTOR OF FISHERIES, KAKINADA , and **Direct Recruit Class II Engg. Officers Association Vs. State of Maharashtra** and also referring to R.P.No.230/76 and Rule 10(a) and Rule 23(a) of A.P. State and Subordinate Service Rules after carefully scrutinizing all the aspects held :

> "The judgment in Venkat Swamy's case (1 supra-**1972(1) An.W.R. 54),** apart from not being of any help to the Writ Petitions, would only negative their contention. The purport of Rule 23(a) was explained by the Court as hereunder :
>
> > "*The appointments (made under Rule 10(a)(i) are not regular and, under the provisions of Rule 10 such appointments do not give any right to the persons so appointed for claiming any preferential rights to future promotions to the said service of category. Further, under rule 10(a)(v), a person appointed under that rule shall not be regarded as a probationer in such service. All these factors are to be taken into consideration by the Government while fixing a date for starting of probation under rule 23(1) of the general rules."*
>
> The other decision relied upon by the learned Counsel Sri Rama Rao is of a Division Bench of this Court in Ashfaq Ahmed's case (2 supra-1999(3) ALT 474). This decision, if at all anything, only suggests as to how fallacious the judgment in R.P.No.230/76 and batch has been. Incidentally, it was the judgment in R.P.No.230/76 and batch that constituted the basis of the G.Os. in question. In paragraph 14 of its judgment, the Division Bench of this Court summed up the principles as under :
>
> i. *Once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. (AIR 1990 SC 1607 para 44(A)).*

ii. *If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted. (AIR 1990 SC 1607 PARA 44(B)).*

iii. *Temporary appointments made under Rule 10(a)(i)(1) of the A.P. State and Subordinate Service Rules are not appointments in accordance with the rules for the purpose of determining the seniority and they are not members of the service until they are duly appointed and their services subsequently regularized (1995 Supp. (1) SCC 572 para 32).*

iv. *Direct recruits take seniority from the date on which he starts discharging the duty of the post borne on the cadre while temporary appointee appointed de hors the rules or on amendment hoc basis gets seniority from the date of regular appointment (1995 Supp.(1) SCC 572 para 14).*

v. *While regularizing the services of a temporary employee appointed under Rule 19(a)(i)(1) and under Rule 23(a) of A.P. State and Subordinate Service Rules, the appointing authority has been invested with the discretion to fix the date of initial appointment or subsequent date as the commencement of the date of the probation (1955 Supp.(1) 572 para 31).*

vi. *An employee cannot be appointed with retrospective effect with effect from the date on which he did not occupy the post and notional seniority cannot be given with retrospective effect when it affects the seniority of those who have already entered into service (1994(1) SLR 37).*

vii. *No person can be promoted with retrospective effect from the date when he was not borne in the cadre as to adversely affect the others (1992(3) SLR 95) (1995(7) SLR 713)".*

The issuance of G.O.Ms.Nos.711 and 714 cannot be sustained on the touchstone of these principles.

In Diwakar's case (3 supra-AIR 1982 SC 1555), the Supreme Court had only upheld the power of the Government to regularize the services of those who were appointed under Rule 10(a)(i) of the Rules at a later stage. There is no indication in that judgment that such persons can be given precedence over those who were regularly selected.

On the other hand, it has to be noted that the Supeme Court, in B.S.Bajwa's case (6 supra-1998(1) SUPREME 217), held that rihts which crystallized inter se between various employees cannot be reopened after long lapse of time. To the same effect is the judgment in Kotam Raju's case (8 supra-2001(3) ALD 649), rendered by a Division Bench of this Court in which one of us (SR Nayak, J) is a party.

It has already been observed that after several rounds of litigation, the Government had fixed certain parameters in fixation of seniority of the Junior Assistants recruited during 1976 and those parameters are in accordance with law.

There is nothing in the impugned G.Os. to indicate that they were issued by the Government under Rule 47 of the Rules, as contended by the learned Counsel for the petitioners. Even if it is to be inferred that they were issued in exercise of the said power, still they cannot be sustained. Firstly, Rule 23(a) and 33, which are stumbling blocks in the matter of indiscriminate conferring of seniority, anterior to the date of selection, were not even referred to, much less relaxed, in the G.Os. Secondly, even where any provision of law confers power on the authority, such power has to be exercised only when the circumstances exist, warranting a decision. The existence of power, by itself, is not a justification for the exercise of it. The authority is expected to take into account not only those factors, which enable it exercise the power, but also those, which render the exercise unsustainable whether on the grounds of law or propriety. As we observed earlier, there was neither factual, nor legal basis for the Government to issue the said two G.Os.

We find no justification for the Government in issuing G.O.Ms.No.711 dated 28-8-1996 and G.O.Ms.No.714 dated 29-8-1996. The same cannot be sustained either on facts or in law. The Tribunal had rightly set aside G.O.Ms.No.711 as well as G.O.Ms.No.714, which is nothing but a sequel to G.O.Ms.No.711. We do not find any reason or justification to

interfere with the orders of the Tribunal. Hence, we dismiss these two Writ Petitions, but in the facts and circumstances of the case, without costs."

Strong reliance was placed on these directions and submissions at length were made on the ground that the present seniority list which had been impugned in the batch and O.As. which had been called in question in the present Batch of Writ Petitions had been drawn up or made totally contrary to the views expressed by the Division Bench referred to supra. A careful scrutiny of the counter affidavits would definitely go to show that the fact that the criteria under G.O.Ms.No.711 had been followed had not been totally ruled out. But however specific stand was taken that not only the said guidelines had been followed, but however the same had been prepared taking into consideration the other aspects and hence the same need not be disturbed.

23. The factors which had been pointed out to show that the seniority list dated 11-2-2000 was prepared as per G.O.Ms.No.711 which in fact had been set aside and the same had been confirmed by the Division Bench as referred to supra are as specified hereunder :

1. CCT, Hyderabad issued parameters to all the nodal CCT,Hyd. D.Cs. to prepare the seniority list of Jr. Assts. These E2.635/94 Parameters were issued as per the directions of the dt.5-8-94 A.P.A.T. in O.A.No.3631.

2. The seniority list of Jr. Assts. Was prepared by the D.C.(CT.)

D.C. (CT),KDA KDA E2-

1445/94

dt.27-9-94

3. The Seniority list of Jr. Assts. was prepared by the D.C.(CT)

D.C. (C.T.), Eluru, KDA Ref.No.313/94

Dt.8-8-1995

D.C.(CT).KDA

4. Integrated provisional seniority list of Jr.Assts. of E2-1445/94

both the divisions was prepared by D.C. (CT), KDA dt.16-9-1995

5. As per the orders of A.P.A.T. Hyderabad A.P.A.T. Hyd

finalisation of the above seniority list was stayed OA.5696/95

upto 30-9-96 Dt.27-10-95

6. As per the orders of the A.P.A.T Hyderabad it A.P.A.T.

was directed that the stay orders granted have not Hyd's

extended beyond 30-9-96 it is open to the authorities OA.5696/95

to proceed further in finalisation of the seniority list. Dt.29-4-1997

Further, the defects which had been specifically pointed out in the impugned seniority list are as hereunder :

1. The D.C. (C.T.), KDA has not followed D.S.C. rankings.
2. The D.C.(C.T.), KDA has not followed the Communal Roster

3. The D.C.(C.T.), KDA has not followed Rule or Reservation

4. The D.C. (C.T.), KDA has not followed parameters of the C.C.T. in Ref.E2.635/94, dt.5-8-1994.

5. The D.C.(C.T.), KDA has not followed the guidelines of A.P.A.T. in O.A.No.3631/94, dt.4-4-1994

6. The D.C. (C.T.), KDA has altered the dates of regularizations of candidates without valid reasons.

7. The D.C.(C.T.), KDA has not considered the directions of A.P.A.T. in O.A.Nos.17886 to 17893/90.

8. The D.C.(C.T.), KDA has not considered the orders of A.P.A.T. in O.A.No.2070/96 dt.3-9-1999.

9. The D.C. (C.T.), KDA has not followed the directions of A.P. A.T. in O.A.Nos.41794 to 41796 dt.1990

10. The D.C.(C.T.), KDA has issued show cause notice dated 11-9-1997 as a S.C. Notice issued on 16-5-1995 by the same D.C.(C.T.), KDA is alive.

11. The Divisional seniority list of Jr. Assts. finalized by the D.C. (C.T.), ELR in Ref.B2/313/94, dt. 8-8-1995 was not served on the candidates of Eluru division and this unserved seniority list was taken as basis for the preparation of integration list.

12. The representation of individuals to regularize their services from the date of their joining was rejected by the Commissioner (CT), Hyderabad, vide Ref.E2.397/86 dt.28-6-1989.

13. The representation filed by certain individuals against the seniority list dt.10-5-1993 to restore their temporary service was negatived by the CCT in Ref.E2/693/98, dt.28-03-1998.

14. The G.O.Ms.No.711 dt.28-8-1996 was set aside by the A.P.A.T. Hyderabad in O.A.No.5420/96, dt.18-9-1998. Aggrieved by these orders, some individuals approached the Hon'ble High Court for restoration of

the G.O.Ms.No.711. The Hon'ble High Court in W.P.M.P.No.34382/98, W.P.No.28245/98, dt.20-10-1998 directed to prepare a draft list of Jr. Assts. keeping in view if the G.O.Ms.No.711 is in force. In obedience to the orders of the High Court, the D.C.(C.T.), KDA has prepared a draft integrated seniority list of Jr. Assts/Steno Typists/Typists comprising of Kakinada and Eluru Divisions and submitted the same to the High Court in D.C. (C.T.), KDA's Ref.E2/119/98, dt.25-1-1999 (CCT's Ref.No.E4-2889/98 dt.29-12-1998). But the integrated list finalized on 11-2-2000 which is also in accordance with G.O.Ms.No.711 is quiet different to the list date 25-1-1999, which was submitted to High Court. Thereby the D.C. has submitted one list to the High Court on 25-1-1999 and finalized another list on 11-2-2000.

15. The present list dated 11-2-2000 was finalized against the para-wise remarks submitted by the D.C. (C.T.), KDA to the A.P.A.T. in O.A.Nos.1283/94, 4785/93, 5415/93, 301/84, 945/94 and 539/94.

16. The objections filed by the applications to fix up their seniority as per the D.S.C. rankings of Eluru Division, but the D.C. (C.T.), KDA has discussed the rankings of Kakinada division in the order date 11-2-2000 in stead of D.S.C. ranking of Eluru Division.

17. The S.C. Notice date 11-9-1997 and seniority list dated 11-2-2000 were split up in two bits i.e., Part-A and Part-B. Each bit of the seniority list 11-2-2000 is having individual serial no.

18. The seniority list date 11-2-2000 was drawn as per G.O.Ms.No.711, which is made in operative by the time of issue of S.C. Notice Dt. 11-9-1997 from which the present list is drawn. The G.O.Ms.No.711 was subsequently set aside by the A.P.A.T. in O.A.No.5420/96 and orders of the A.P.A.T. were upheld by the Hon'ble High Court of A.P. in W.P.No.28245/98 and 19636/99 dt. 5-12-2000."

No doubt these grounds had been specifically pleaded in the reply affidavit in W.P.No.9009/2002.

24. The relevant portions of the order made by the Tribunal already had been referred to supra and the Rules governing the field also had been specified above. In the decision referred (2) supra it was held at paras 68 and 69 as hereunder :

> "When a person completes his period of probation satisfactorily as per the provisions of Rule 23 of the General Rules, he shall be deemed to have been regularized person the service from the day when he is appointed to a service though such employee might have completed period of probation at a later date. Further, Rule 23(a) enables the appointing authority to determine the date of commencement or probation either from the date of appointment or from such earlier date as the appointing authority may determine, in which event the person shall be deemed to have been regularized from such earlier and/or anterior date as decided by the appointing authority. When once a person is regularized in the service, that is to say, when the period of probation is satisfactorily completed, and deemed to have been completed from a date anterior to the date of appointment to a service, the date of commencement of probation which is either the actual date of appointment of service or such earlier date as is determined by the appointing temporary can legitimately be the relevant date for the purpose of Rule 33(a) also which speaks of fixing of seniority. When once the appointing authority declares the date of regularization, it is final and the same cannot ordinarily be altered or changed. Even when the seniority list is reviewed under Rule 36 of the General Rules, to which a reference has already been made, the date of regularization cannot be changed or altered. But having regard to the rule position, where inter se seniority is fixed among direct recruits and promotees, the seniority position can be changed subject to maintaining inter se seniority placement in category, that is to say, either direct recruit category or promotee category. To say in other words, when a person belongs to promotee category, his date of regularization, and his place in the seniority list

remain unchanged.

The above view of ours is supported by a Division Bench judgment of this Court in Subramanyshwar Rao's case (supra). In the said case, the writ petitioner was promoted as Tahsildar on 1-5-1961, and his services were regularized by the District Collector, who is the Competent Authority with effect from 17-6-1957, the date of commencement of probation. In 1963, the Board of Revenue also prepared a gradation list showing him at serial number 40, and the date of regularization as 17-5-1957. However, the Board sought to revise the date of regularization, and accordingly issued notice to the petitioner, which was objected to by the petitioner in vain. The common gradation list was revised and the petitioner was regularized with effect from 4-10-1961 changing his date of regularization. A learned single Judge of this Court invalidated the Government action. In the appeal filed by the State, a Division Bench of this Court comprising Komaraiah and Kondaiah, JJ. (as their Lordships then were) considered the scope of power exercisable under Rule 23 of the General Rules. After noticing all the relevant General Rules, it was observed :

> …….There is no provision for an appeal against an order declaring the completion of probation. Also there is no appeal provided with regard to the fixation of the date of probation which may be determined under the last para of Rule 23(a). The dates of commencement of probation and also the completion of probation thus depend upon how the competent authority exercises its power. The appointing authority in the present case was admittedly the Collector who declared the probation.
>
> There is also provision in the statutory rules with regard to seniority. Rule 33 says that the seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation under Rules 10(a)(iv), 10(b), 16, 37(d) or 42(d), his seniority shall be determined by the date of commencement of her service which counts towards probation. It is also provided in Rule 33(b) that the appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rules of reservation of appointments or for any other reason the

> order of preference among them, and where such order has been fixed seniority shall be determined in accordance with it.

Yet again, the Division Bench further ruled thus :

> The result of the above discussion is that the Government was bound to accept the date of probation of the writ petitioner as approved by the Collector quite in accordance with the statutory rules long ago and even before the GOs, relied on came into force with the result that a vested right had accrued to him on that basis. The decision of the Collector was final and the Government under person provision, express or necessarily implied, could interfere with it. That apart, the formula sought to be applied could not be resorted to as it went beyond the rules and was inconsistent with them. Further, even assuming that they could resort to that formula, it is clear even on their own showing the petitioner could not be given the date of commencement of his probation in the year 1961 but much earlier.

It is pertinent to observe that as far as the District level seniority list is concerned merely because an integrated seniority list is being prepared for the purpose of promotion the same cannot be disturbed and the same ranking may have to be maintained. Rule 10, Rule 23, Rule 33(a) and (b) of A.P. State and Subordinate Service Rules and Rule 25 of the A.P. Ministerial Service Rules may be conveniently referred to in this regard. When G.O.Ms.No.711 which had been issued in between had been challenged and the same had been set aside and confirmed by a Division Bench of this Court, it is needless to say that the preparation of the seniority list definitely cannot be

based on any of the parameters, guidelines or the conditions specified in G.O.Ms.No.711 and this is the most crucial aspect which could have been taken into consideration by the Tribunal. Apart from this aspect of the matter, it is really unfortunate that this appears to be a long drawn litigation and the seniority list which had been settled long back was sought to be reopened and the same could not be finalized and ultimately again disturbing the seniority in an arbitrary fashion without following the proper method or procedure that too after a long lapse of time after the settlement and fixation of seniority, would be definitely unjust. It is no doubt true that when clear illegalities are pointed out, only on the ground of long lapse of time the same cannot be defeated, but equally it may have to be kept in mind that disturbing the seniority quite often would disturb both good governance and good public administration. This aspect also may have to be kept in view and it is suffice to state that the seniority list which had been impugned in the O.A. at least in substance had been based on what had been laid down in G.O.Ms.No.711 which was held to be bad both by the Tribunal as well as by the Division Bench of the writ Court.

25. <u>POINT NO.4</u>

In the light of the foregoing discussion, it may have to be decided as to what relief, the writ petitioners in this batch of Writ Petitions are entitled to. Several of the directions issued from time to time and also

striking down G.O.Ms.No.711 and the same being confirmed by the writ Court also had been discussed supra. No doubt certain comments had been made relating to certain anomalies which occurred even while preparing the seniority list in the year 1993. It is unfortunate that though some exercise was made during the year 1995 the same had not been finalized. Ultimately the present seniority list dated 11-2-2000 had been questioned in O.A.No.845/2000 and batch which had been decided and the said common order is being impugned in the present batch of Writ Petitions. It is pertinent to note that in between 1993 and 2000, nearly seven years had passed by. However in the light of the facts which had been referred to supra, it can be said that much water had flown in between and hence in the peculiar facts and circumstances of the case, the seniority list of 1993 cannot be restored at this point of time in the light of the subsequent events. Certain of the interim orders which had been made in this batch also had been referred to while making submissions. In **Reserve Bank of India Vs. N.C. Paliwal** while dealing with the aspect of seniority and interference by Courts, it was held that it is open to the State to lay down any Rule which it thinks appropriate for determining the seniority in service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more proper. In **Lila Kanta Vs. Collector of Customs** the aspect of matters of policy

of the Government and exercise of discretion to adopt and change the policy from time to time after assessing the situation with reference to the administrative exigencies and doing over all justice and non-interference by Courts unless the same is arbitrary, perverse or mala fide or for extraneous reasons had been emphasized. In **Karam Pal etc. Vs. Union of India** it was held that unless there is any serious failure in implementing the Rules and grave injustice is done to some individuals or a group of officers, it would not be proper for the Courts to interfere with the working of the Scheme and dislocate the inter se seniority of the Officers. In **Shitla Prasad Shukla Vs. State of U.P.** it was held that in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority so long as the competent authority had acted bona fide and in accordance with the principles of fairness and fair play. In **Union of India Vs. Dr.R.D. Nanjiah** it was held that even a seniority list purporting to be final can be vitiated by non-observance of conditions precedent and in order to establish the invalidity of the final list on some grounds of invalidity, those grounds must be shown to exist. The challenge of seniority list by persons affected had been dealt with in **Union of India Vs**. **Vasant Jayaram** . In **R.M. Ramual Vs. State of Himachal Pradesh** it was held that normally when seniority list has been made final it should not be allowed to be challenged but when the seniority list is

prepared ignoring all just principles and also Rules framed or directions given by the appropriate authority seriously affecting any officer it is always liable to be examined and set aside by the Court. In **S.Chinnappa Reddy and others Vs. State Of Andhra Pradesh** where the Tribunal considered it appropriate to direct material which was basic and essential to be placed before it for commencing exercise for preparing the seniority list, it was held that Tribunal had overreached itself.

26. The principles well settled in service jurisprudence in relation to the seniority list and attack thereof need not be further elaborated. In the present context on a careful analysis of the events, it is clear that several anomalies had crept in and in the light of the specific stand taken that despite the striking down of G.O.Ms.No.711 which had been confirmed even by a Division Bench of this Court, in the light of those parameters, settlement of the seniority list definitely cannot be sustained and the same had caused grave injustice to the affected parties. Apart from this aspect of the matter, several other reasons which had been narrated supra would definitely go to show that it would not be just to leave the seniority list impugned undisturbed. It is no doubt unfortunate that this is a long drawn litigation and this Court is conscious of the same, but in the light of the views expressed supra, this Court is left with no other option but to set aside the seniority list which had been impugned in the O.As. aforesaid giving

liberty to the competent authority to take up a fresh exercise by calling for appropriate additional objections if any in this regard and prepare the seniority list in accordance with the directions issued by the Tribunal from time to time and also in the light of the views expressed in the O.As. and the writ Court in relation to G.O.Ms.No.711 after a careful scrutiny of all the aspects and to finalise the same within a period of three months from the date of receipt of this order. Further, it would be just and proper to maintain status quo in all respects so far as it relates to Kakinada Division till such exercise is finalized as referred to supra, preferably within a period of three months and even early thereto with all speed and expediency in the light of the inordinate delay already caused in this regard. Certain aspects had been left untouched in the light of the fact that again the competent authority is given the liberty to take up this exercise.

27. Accordingly the Writ Petitions are disposed of. No order as to costs.

_____

Justice G. Bikshapathy

_____

Justice P.S. Narayana

Date :

L.R. copy to be marked : YES / NO

To:

One copy to Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

One copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1. The Deputy Commissioner of Commercial Taxes,

Kakinada Commercial Taxes Division,

East Godavari District-533001.

2. The Deputy Commissioner of Commercial Taxes,

Eluru Commercial Taxes Division,

West Godavari District-521001.

3. The Commissioner of Commercial Taxes,

Government of Andhra Pradesh,

M.J. Road, Nampally, Hyderabad-500001.

4. 2 C.Cs. to G.P. for Services-II,

High Court of Andhra Pradesh,

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